Public Policy Issues	Tab 16

Background:

A. State Policy Issues

TCDD Staff will provide an update regarding recent public policy activities, including the implementation of legislation and budget adopted by the 84th Texas Legislature.

Discussion topics include:

- Guardianship Reform and Supported Decision-Making
- Day Habilitation
- Community First Choice

B. Update on State Supported Living Center Activities

The Committee will receive an update on recent activities involving State Supported Living Centers.

C. Federal Policy Issues

TCDD Public Policy staff will provide an overview of the status and implementation of various federal legislative initiatives that impact people with disabilities.

Discussion topics include:

- Fair Housing Act and Supreme Court Decision (news article provided for your reference)
- ABLE Act and Proposed IRS Rules (news article provided for your reference)

Public Policy Committee **Agenda Item 6.**	**Expected Action:** The Committee will receive updates on these items and may make recommendations for consideration by the Council.
Council **Agenda Item 11. A.**	**Expected Action:** The Council will receive reports from the Public Policy Committee and consider any recommendations offered from the Committee.

Austin American-Statesman

Suehs: Give Elderly and Persons with Disabilities Peace of Mind

By Tom Suehs - Special to the Austin American-Statesman newspaper. Published date: July 13, 2015

Some have called it the "silver tsunami," the far-reaching effects of an aging baby boomer population.

From tax revenues and pension funds to transportation, health care and housing options for older adults, the impact of a rapidly aging U.S. population will be significant.

By 2020, about 25 percent of the U.S. workforce will be workers age 55 and over. And by 2030, 20 percent of American workers will be 65 or older.

And as the population ages, those Texans who may no longer drive or be able to live independently face a more daunting challenge.

Imagine if you had your freedom to make decisions about where you live, whom you associate with and your right to decide medical treatments and financial activities taken away, as well as losing your right to vote and to marry. That's what can happen when you're placed into guardianship.

As the numbers of Americans with Alzheimer's disease, dementia and disabilities increases, the need for guardianship will also rise. More than 50,000 Texans live under guardianship now — a 60 percent increase since 2011.

Ideally, guardianships are supposed to provide protection for adults whom our courts deem incapacitated. Often, guardianship is appropriate and works as intended; ensuring guardians effectively manages the affairs of the elderly and disabled appropriately, honestly and fairly.

Unfortunately, guardianship profoundly limits a person's decision-making. The guardianship process often opens the door to abuse and neglect, as well as unscrupulous and greedy family members. It has become a legal process deeply in need of reform.

It's rare to bring together such a broad and politically diverse coalition of people who are elderly, people with disabilities, social workers and health care advocates, but that silver tsunami — along with a history of abuse and neglect under the present guardianship system — was a clarion call to unite us.

The Guardianship Reform and Supported Decision-Making Workgroup, of which I'm a member, brought together more than 15 organizations to champion needed reforms.

This spring, Texas lawmakers, with the leadership of state Sen. Judith Zaffirini and state Rep. John Smithee, embraced a bill of rights for persons under guardianship — commonly referred to as wards. It's not only landmark in the protections and empowerment it provides persons under guardianship, but it also makes Texas a trailblazer, as we are the first state to pass and sign "supported decision-making" into law.

What is supported decision-making? Texas Supreme Court Chief Justice Nathan Hecht, a strong advocate for these reforms, aptly coined the phrase, "a durable power of attorney light." It allows people who need help to enter into an agreement with someone they choose and trust to help understand and communicate decisions.

Supported decision-making is a fair and reasonable alternative to guardianship. It ensures Texans and our courts consider all options and work to avoid undue guardianship arrangements.

These reforms enjoyed not only the broad support of advocates, but were endorsed by the Texas Judicial Council, garnering additional credibility and a legal seal of approval.

The path forward looks considerably brighter for persons and guardians in Texas, but we know challenges remain. There is opposition to these reforms from some members in the legal community, who created a cottage industry going after the limited assets of the elderly and individuals with disabilities.

We must remain vigilant that our courts and the guardianship system are used for justice and to protect the most vulnerable Texans, and are not used to support the greed of unscrupulous guardians, family members or lawyers looking to make a fast buck.

Working to enact guardianship reforms and supported decision-making was a solemn promise I made to my late mother-in-law. For her and for the persons and families of Texans in guardianship today, we can truly say to the Texas Legislature, job well-done.

Tom Suehs is a former executive commissioner of the Texas Health and Human Services Commission and is a member of the Guardianship Reform and Supported Decision-Making Workgroup.

Do people in the Home and Community-based Services (HCS) program have to attend a habilitation program?

The short answer is "No." State rules are clear.* Waiver participants are not require to attend day habilitation programs. Day habilitation is one of many choices.

Medicaid waiver participants, their LAR, family members, friends, and providers sometimes ask whether going to day habilitation is *required*. The question comes up because many people in the HCS program attend day habilitation.

Part of the confusion may stem from the similarity in terms *day activity* and *day habilitation*. In HCS, providers are required to give each adult participant under the age of retirement (and LAR on the individual's behalf) choices about *day activities* that will help the individual get, keep, and build on skills needed to live in and be a part of the community. The choices offered must be of the best type and amount to meet the individual's needs and preferences.

The provider must offer choices that are based on the Person Directed Plan (PDP). The individual and LAR direct the development of this plan, which describes the supports and services needed to achieve the outcomes that the individual and LAR want. This core plan serves as the basis for what providers do (described in the Individual Plan of Care and the Implementation Plan).

Following these plans, providers are required to make day activities and experiences available for at least six hours a day, five days a week. The individual may choose and the provider must make available any HCS service option, as well as natural or community supports, for day activities. These choices and opportunities must be like those experienced by peers without disabilities. The activities must be appropriate to individuals of the same age and consistent with the individual or LAR's choice. *Day activities may or may not be provided through day habilitation, which is just one option and choice, not a requirement.*

Any limitation on the individual's choice cannot occur without good reason. It must be agreed upon and put in writing by the team involved in service planning for the individual. This team includes the individual, LAR, and any other persons chosen by them, including friends and family members.

The same principles hold true for individuals receiving residential assistance through HCS host home/companion care (formerly foster care), supervised living, or residential support.

Waiver participants are not required to attend a day habilitation program.

Thoice is one of the cornerstones of the HCS program. If an individual, LAR, or host home/companion care or other provider believes that opportunities for day activities are not appropriate, are not consistent with the PDP, or are limited without a good reason agreed upon by members of the service planning team, a complaint can be made to the Consumer Rights at 1-800-458-9858 or by emailing CRID@dads.state.tx.us.

*Texas Administrative Code, Title 40, Chapter 9, Subchapter D, Home and Community-Based Services Program

CFC Frequently Asked Questions

Community First Choice (CFC)

Question: How will CFC work in Texas?
Answer: CFC services will be available across all service models for children and adults who qualify for this benefit. See the attached CFC Provider Summary Tool table for more information on parties responsible for CFC activities.

Question: What is CFC?
Answer: CFC is a state plan option that allows states to provide home and community-based attendant services and supports to eligible Medicaid enrollees under their state plan.

Question: How will CFC affect individuals currently on an interest list?
Answer: Individuals on the interest list may be eligible to receive services through CFC, provided they meet eligibility criteria. Individuals on an interest list can continue to be on the interest list of waiver services while receiving CFC.

Question: Who is eligible for CFC?
Answer:

1. To be eligible for CFC, an individual must:
    - Be a child or an adult who is eligible for Medicaid.
    - Meet an institutional level of care, including:
        i. hospital,
        ii. a nursing facility,
        iii. an intermediate care facility for individuals with an intellectual or developmental disability,
        iv. an institution providing psychiatric services for individuals under age 21, or
        v. an institution for mental diseases for individuals age 65 or over.
    - Need help with activities and instrumental activities of daily living (ADLs and IADLs), such as dressing, bathing and eating.

Question: Is there an interest list for CFC or is it an "entitlement" like Personal Care Services (PCS)?
Answer: No, there is not an interest list for CFC. CFC is a Medicaid State Plan entitlement service and must be provided to those individuals that meet the eligibility criteria.

Question: Will people with intellectual or developmental disabilities (IDD) who meet the eligibility criteria for CFC have access to CFC services, regardless of whether they are currently enrolled in STAR+PLUS or receiving/not receiving services through one of the four IDD waivers?
Answer: Yes. Individuals with IDD that meet the coverage criteria and are being served in a home or community setting will have access to CFC. CFC is available to individuals that reside in their own home, or the home of a family member (own home, family home setting).

Question: Will people that are dual eligible, meaning they have both Medicaid & Medicare, be eligible to receive CFC?
Answer: Yes, individuals who are eligible for “full” Medicaid state plan benefits and meet the other eligibility criteria for CFC will be able to receive CFC services. Full dual-eligible means an individual who is enrolled in Medicare and Medicaid and is eligible to receive full Medicaid state plan benefits, and is not limited to payment of Medicare premiums and cost-sharing.

Question: Will habilitation be accessible to all individuals regardless of their level of functioning?
Answer: All individuals who meet the eligibility criteria for CFC are eligible to receive habilitation if the individual has an identified unmet need for the service as determined by the individual and the service planning team using a person-centered planning process.

Question: As current PCS (or Personal Assistant Services (PAS)) providers can also become the CFC providers, does this not create a conflict of interest as they are now providing habilitation services to teach clients increased independence and therefore would decrease their paid hours to provide PAS/PCS which is helping them with ADLs/IADLs for which they require assistance?
Answer: The goal of CFC is increase access to long-term care services and supports that enable individuals to remain in a community setting even though a medical condition or disability would warrant placement in a long-term care facility. Habilitation helps members acquire, maintain, and enhance skills to accomplish ADLs, IADLs and health-related tasks. Individuals that receive habilitation services may have less of a need for attendant services. Authorization of services will be based on an individual's functional assessment and service needs.

Question: Do children have to choose a managed care plan in order to access the CFC benefit?
Answer: No. Currently, children who meet the requirements may access CFC through the Fee-For- Service (FFS) model if they are enrolled in FFS or STAR, or managed care if they are enrolled in STAR+PLUS or STAR Health.

Question: Please clarify the availability of CFC to children in foster care.
Answer: Children in Department of Family and Protective Services (DFPS) conservatorship can receive CFC if they meet the criteria.

Question: Will you be holding trainings in person, non-webinar?
Answer: DADS and HHSC conducted in person trainings across the state beginning in December 2014-February 2015. Additional in-person trainings are not planned.

Services

Question: What is the definition of cueing with regards to habilitation services?
Answer: Cueing could include reminders for activities such as personal hygiene, diet, dressing, toileting, and social behavior.

Question: What services are included in the CFC benefit?
Answer:

- PAS: assistance with ADLs and IADLs through hands-on assistance, supervision, and/or cueing.
- Habilitation (HAB): acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks
- Emergency response services (ERS): backup systems and supports to ensure continuity of services and supports. Backup systems and supports include electronic devices to ensure continuity of services and supports and are available for individuals who live alone, who are alone for significant parts of the day, or have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.
- Support Management: voluntary training on how to select, manage, and dismiss attendants. This is a voluntary service that offers practical skills training and assistance related to recruiting, screening, hiring, managing, and dismissing attendants.
- Support Consultation: An optional service for those who use the CDS option that is provided by a support advisor and provides a level of assistance and training beyond that provided by the Financial Management Services Agency (FMSA) through Financial Management Services (FMS). Support consultation helps an

employer to meet the required employer responsibilities of the CDS option and to successfully deliver program services.
- PAS and HAB will be available through the CDS option.

Question: For children receiving personal care services (PCS) in FFS and STAR, must the client choose either PCS or CFC or can they receive both at the same time?
Answer: Clients will be assessed for CFC services at the time of their PCS reassessment. In cases where children qualify for CFC services, CFC will replace the PCS benefit for children who meet the CFC eligibility criteria. Individuals who do not meet the CFC eligibility criteria, but meet the criteria for PCS, will be eligible to receive PCS consistent with current PCS policy requirements.

Question: Will CFC PAS/HAB be provided long term, since it includes habilitation and a child may need ongoing support to complete tasks such as eating, bathing, and dressing? If the child continues to need CFC year after year, would they have to consider using PCS as they have not gained sufficient skills to complete tasks by themselves?
Answer: CFC services are not time or age limited. Eligible individuals will be able to access CFC services as long as needs are present.

Question: Is there a limit on the amount of CFC services an individual may receive?
Answer: There is not a defined annual cost limit for CFC. However, the amount of CFC services an individual receives is based on an assessment of an individual's need for the service as developed by the service planning team, using a person centered planning process.

Question: What are ADLs and IADLs?
Answer:
- ADLs means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- IADLs means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.

Question: What is support management, how will it be provided, and will the provider be compensated?
Answer: Support management is voluntary training on how to select, manage, and dismiss attendants. If an individual requests this service, the CFC provider will be expected to provide the individual with information about support management through a toolkit which will soon be available on the DADS and HHSC websites. There is not a separate rate for support management.

Question: In general, what is the difference between PCS, PAS, and CFC?
Answer:
PAS and PCS provide personal assistance services in completing tasks related to ADLs/IADLs. CFC will provide personal assistance services and habilitation. Habilitation includes acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks. In addition, individuals receiving CFC must meet institutional level of care requirements.

Question: Is there a limit on the amount of CFC services individuals may receive?
Answer: There is not a defined annual cost limit for CFC. However, the amount of CFC services an individual receives is based on an assessment of an individual's need for the service and consideration of unmet needs as developed by the service planning team, using a person-centered planning process.

Question: Does CFC replace respite?
Answer: No. CFC does not replace respite. Respite will remain a service in the waiver programs. Respite is not changing as part of this initiative. Respite cannot be provided at the same time as CFC PAS/HAB.

Question: Does the state plan include respite?
Answer: No, respite is not a state plan benefit. The CFC benefit that will implement on June 1, 2015 does not include respite.

Question: Does CFC have an impact on day habilitation?
Answer: Day habilitation is not a CFC service, and will remain a service in the IDD waiver programs. Day habilitation is not changing as part of this initiative. Day habilitation may not be provided at the same time as CFC PAS/HAB.

Question: Will CFC ERS be available for individuals who do not live in their own home, or a family home setting (e.g., an assisted living facility)?
Answer: No. CFC ERS will be available only to individuals who reside in their own home or family home setting.

Level of Care Determinations and Assessments

Question: Who is responsible for determining level of care for CFC eligibility?
Answer: There are three levels of care determinations which include: nursing facility/hospital, ICF/IID, and IMD (for individuals under 21 and over 64). Different entities are responsible for completion and approval of the LOC depending on the program through which CFC is being delivered. For individuals in STAR+PLUS, who meet medical necessity, the MCO will be responsible for assessing and authorizing CFC services. Individuals with IDD will be assessed by the Local Intellectual and Developmental Disability Authorities (LIDDA). See the attached CFC Provider Summary Tool for more information on parties responsible for CFC activities.

Question: Who is responsible for completing the functional assessment?
Answer: Different entities are responsible for completion of the functional assessment depending on the program through which CFC is being delivered. See the attached CFC Provider Summary Tool for more information on parties responsible for CFC activities.

Question: Will LOC reassessment still be required annually?
Answer: Yes, LOC determinations are required annually or if there is a significant change in condition.

Person-Centered Planning

Question: What is person-centered planning?
Answer: A documented service planning process that includes people chosen by the individual, is directed by the individual to the maximum extent possible, enables the individual to make informed choices and decisions, is timely and occurs at times and locations convenient to the individual, reflects cultural considerations of the individual, includes strategies for solving conflict or disagreement within the process, offers choices to the

individual regarding the services and supports they receive and from whom, includes a method for the individual to require updates to the plan, and records alternative settings that were considered by the individual.

Question: Who must receive person-centered planning training?
Answer: All persons completing the functional assessment and service plan must receive person-centered planning training. HHSC and DADS are working on disseminating further details about the training, timeframe to complete, and policy.

Question: How long do assessors have to complete the training?
Answer: Assessors have two years from CFC implementation or date of hire to complete the training.

Question: If someone has already attended the two-day person-centered planning training, will they be able to use that past training to qualify for the training requirement for CFC?
Answer: Provider staff will need to send inquiries about person-centered training qualifying for CFC to the appropriate agency overseeing the benefit for that provider (HHSC, DADS). For HHSC, the inquiry should be sent to **MCD_CFC@hhsc.state.tx.us**. For DADS, the inquiry should be sent to **CFCpolicy@dads.state.tx.us**.

CFC Appeals Process

Question: Is the individual going to have appeal rights for CFC eligibility denials?
Answer: Yes, individuals will have the right to appeal any adverse action related to CFC (reductions and denials of services, suspensions, denial of eligibility, terminations). For CFC, the appeals will follow the same process they do today depending on the service delivery model.

CFC and Electronic Visit Verification (EVV)

Question: Will providers have to use Electronic Visit Verification (EVV)?
Answer: If you are a provider in a waiver program that currently uses EVV you will continue to use EVV for CFC services. If you are contracting to provide CFC services to an individual through an MCO (e.g. non-waiver), you will be required to use EVV even if you are not required to use EVV for DADS waiver programs. For more information about EVV, please reference the HHSC EVV website at:
http://www.tmhp.com/Pages/Medicaid/Medicaid_home.aspx

For more information on EVV please see:
http://www.dads.state.tx.us/evv/index.html

CFC and Managed Care Organizations (MCOs)

Note: Additional information on managed care processes will be published in the near future.

Question: What does MCO stand for and please give an example.
Answer: MCO stands for Managed Care Organization. There are five MCOs that will be contracting with providers for CFC: Amerigroup, Molina, Cigna HealthSpring, Superior, and United Healthcare.

Question: Will CFC be available in all the managed care models?
Answer: No, children in STAR receive CFC through FFS.
CFC is available in STAR+PLUS, STAR Health, and the Dual Demonstration.

Question: Can an individual receive both STAR+PLUS waiver and CFC since both offer PAS services?
Answer: An individual can be enrolled in STAR+PLUS waiver and receive CFC services as long as the individual has a need for at least one waiver service. While it is true both STAR+PLUS waiver and CFC include PAS, STAR+PLUS waiver PAS includes protective supervision, while CFC PAS does not. However, an individual can receive Protective Supervision through the STAR+PLUS waiver and continue to receive CFC PAS.

Rates for CFC

Question: What is the pay rate for CFC for those not already in a waiver?
Answer: The rates for CFC services will be published in May 2015.

Provider Types

Question: Who can deliver CFC? What are the qualifications of CFC service providers?
Answer: CFC services will be provided by long-term services and supports (LTSS) providers and state plan service providers that are determined to be qualified by the State of Texas in a program already approved by CMS. This includes: licensed Home and Community Support Service Agencies, Personal Care Service providers, and certified DADS waiver providers.

Question: What do the Local Intellectual and Development Disability Authorities (LIDDA) provide?
Answer: Under Senate Bill 7, 83rd Texas Legislature, Regular Session, 2013, LIDDA provide:
Service coordination to individuals with Intellectual and Developmental Disabilities (IDD) receiving CFC services, assessments for CFC eligibility and functional needs, and proposed plans of care for individuals with IDD. LIDDA may not provide CFC services *and* perform service coordination.

Question: Will CFC require licensure as a HCSSA or certification as an HCS or TxHmL Program provider—does a provider need both?
Answer: The provider can qualify to deliver CFC as a HCSSA or as a certified HCS or TxHmL Program provider.

Question: What type of Home and Community-based Support Services Agency (HCSSA) license does a provider need to participate in CFC?
Answer: Providers need PAS or a Home Health HCSSA licensure.

Question: Are there any Significant Traditional Providers (STPs) in CFC?
Answer: SB7 requires MCOs to extend a contract to STPs. STPs include CLASS licensed home and community support service agencies (HCSSAs) and certified Home and Community-based Services and Texas Home Living providers. HHSC has also included Deaf Blind with Multiple Disabilities (DBMD) HCSSAs as qualified providers. STPs can contract with MCOs to deliver CFC services to non-IDD waiver individuals under contract with the MCOs.

Question: How can an agency contract with an MCO to provide CFC services?
Answer: State law requires MCOs extend provider contracts and include significant traditional providers in the CFC provider network. Significant traditional providers include providers who currently delivery services under the following waiver programs: DBMD, CLASS, HCS and TxHmL. Providers have the choice to participate in the managed care network.

To contract with an MCO a provider may contact the MCO.

Amerigroup	1-713-218-5100 Ext. 55446
Molina	1-866-449-6849
Cigna HealthSpring	1-877-653-0331
United Healthcare	1-888-787-4107
Superior	1-866-615-9399 Ext. 22534

Settings

Question: Where can CFC be provided?
Answer: All CFC services are provided in a home or community-based setting, which does **not** include a nursing facility, hospital providing long-term care services, institution for mental disease, intermediate care facility for individuals with an intellectual disability or related condition, or setting with the characteristics of an institution.

Question: Can individuals in group homes receive CFC?
Answer: An individual must live in their own home or family home to receive CFC services.

Question: Will individuals leaving a nursing facility (NF) and going into the community qualify for CFC?
Answer: If an individual is transitioning from a nursing facility and continues to meet the eligibility criteria for CFC (outlined in question 1), they would be able to receive CFC services if they have an identified need.

Question: How is the term "community based setting" defined?
Answer: Federal requirements for home and community-based settings can be found at the following link: http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/requirements-for-home-and-community-settings.pdf

Consumer Directed Services Option

Question: If an individual chooses the Consumer Directed Services (CDS) service delivery option, does the individual hire a provider to provide Support Management and pay that service provider, similar to how Support Consultation works?
Answer: Support Management is a voluntary training benefit rather than a service. There will be no reimbursement rate for it. Provider agencies or Financial Management Services Agency (FMSA) are responsible to offer support management. Support consultation is available for CDS employers who choose additional support for hiring, dismissing and training attendants.

Question: Will CFC be available under the SRO service delivery option?
Answer: Yes.

HARVEY KRONBERG'S
Quorum Report
REPORTING TEXAS POLITICS SINCE 1983

84th Legislature Left the Troubled State Supported Living Center System in Limbo

By KIMBERLY REEVES

July 6, 2015

"No one should be claiming victory here"

The state's system of 13 State Supported Living Centers got a reprieve during this year's legislative session, but advocates for the disabled do not at all consider it a victory.

The potential closure of the Austin State Supported Living Center was a flashpoint during the 84thsession. While testimony was split on the value of keeping the centers open – especially the one in Austin – advocates for the disabled were vocally supportive of putting the living centers on life support with a timeline to close.

"No one should be claiming victory here," said Dennis Borel of the Coalition of Texans with Disabilities. "The state has not won, nor have individuals with disabilities. All we did was to maintain the status quo, and all the problems associated with it. Things are not going to be any different."

The failure of the Department of Aging and Disability Services' sunset bill, Senate Bill 204, means the living centers are in limbo. In addition to the plan to close, there would have also been an assessment of the true costs of the centers, which have become a significant money drain in the state's budget.

Sen. Kirk Watson, D-Austin, expressed his own misgivings about a proposal to move residents of the Austin SSLC into other types of community settings on the floor of the Senate during discussion of the sunset bill.

"Where we find ourselves today is due to a failure of the state to best serve these most vulnerable Texans," Watson said. "Simply closing this facility will not ensure safety, dignity and respect for Texans living with intellectual and development disabilities. We've fixed nothing."

Borel sees nothing to support in a system that now serves just over 3,200 residents with a ballooning budget of more than $662 million and almost 14,000 employees. Joe Tate of Community Now!, who has filmed a documentary on the state supported living centers, calls their continued existence nothing more than a jobs program for small communities.

“To be bold on this issue is hard. It’s such a special interest issue. So much federal money is pouring into these districts,” Tate said. “In many places, the living centers are one of the largest employers in the community. That’s why you see the Abilene Chamber of Commerce at the hearing. This is about jobs.”

The gentleman’s agreement in both chambers is that no lawmaker will support closing a facility that impacts a single district, Borel said. And, he said, the state has a perverse incentive to maintain the state system: Each individual patient living at a state-supported facility can draw down hundreds of thousands of dollars in various services. If that same patient was in a community setting and a care attendant could end up paid $8 per hour.

Borel said it’s almost impossible to separate out the state money from the money that would continue to flow to Texas if the state supported the option of community housing, which is what advocates for the disabled would like to see. As Watson noted, the number of providers willing to step up and take those individuals is small.

Advocates still see the state centers as a drain on limited state resources. As Borel points out, the waiting list for community-based services in areas such as autism are long. Children and their families can wait years for services. Not a single state supported living center has a waiting list, even as the number of residents dwindles.

The fact the federal government continues to monitor the state system of living centers without better results is galling to Borel. A settlement agreement between the state and the Department of Justice has set a low bar for the living centers to reach, although DARS Spokesperson Melissa Gale says the centers are making slow but steady progress on meeting federal guidelines.

“We understand there are a variety of opinions regarding the size and number of state supported living centers operated by the State of Texas,” Gale said of calls to close the state centers. “As long as the SSLCs are an option, we will make it our top priority to ensure residents receive high quality care, and we will continue to seek opportunities to improve services as we move forward.”

Independent monitors make rounds of all the state supported living centers. Reports for Lufkin and Richmond were posted recently. Gale said those initial baseline reports will be translated into outcome measures that will be used to measure the quality of service among residents going forward.

Gale calls progress “slow but steady.”

Borel, who continues to follow the reports on individual centers, completely disagrees.

He pulled a report from the Austin State Supported Living Center in March, under the new system, that outline deficiencies in areas such as allowing residents to have access to their belongs and the ability to implement proposed behavior modification plans.

A brutal fight club at the Corpus Christi SSLC prompted then-Gov. Rick Perry to declare the reform of the system an emergency issue for the 81st legislature. Borel and Tate, however, see the changes as superficial improvements.

“I can’t imagine that they’ve suddenly turned around from 40 years of deficiencies and 6 years of DOJ monitoring of a plan that the state signed off and agreed to,” Borel said. “They agreed to correct the issues in four years. They’re not even close.”

Gale said the timeline for the improvement of the system of 13 residential facilities was indefinite. She said the agency, which will be folded into the greater Health and Human Services Commission by 2017, is willing to work with all partners.

It’s time to shut the system down once and for all, Borel said. Capacity has dropped 70 percent over the past four years. Facilities are poorly maintained. The Austin SSLC already has been pared the number of residents by half. The only upside Borel can see in the sunset bills is that proceeds from the sale of any property will go back into healthcare and not the state’s general revenue.

“If we shrink the number of facilities to five, they’d be able to staff it better, oversee it better. All the people who wanted a facility would have one,” Borel said. “The population in these facilities will go away. It’s going to continue to happen. That’s why 11 other state now have no state-operated facilities at all.”

The closure of any SSLC will require legislative action.

Texas Housers
Texas Low Income Housing Information Service

The Real Impact of the Supreme Court's Fair Housing Decision

By CHRISHELLE PALAY
July 2, 2015

Last week, the U.S. Supreme Court released its decision on the much debated case Texas Department of Housing & Community Affairs vs. Inclusive Communities Project, Inc. The justices ruled that the disparate impact provision of the Fair Housing Act is a viable instrument to help determine the validity of housing discrimination claims for vulnerable populations.

While many fair housing advocates across the nation are celebrating this ruling, there are also many state agencies and developers who view disparate impact simply as an impediment to business. In the mix of opinions, there remains a voice that is not being consulted or, honestly, even regarded: The people for whom the law was intended.

While the fight for justice wages on, who is taking time to talk to the people who are most affected and covered by this latest ruling? Some of these people might include:

- The young African-American father who cannot find quality affordable housing near the college where he attends night classes.
- The single mother in search of a quality school district so that her special needs child can receive a good education.
- The immigrant family seeking quality housing in a safe neighborhood that is near the parents' places of work.

These are just a few examples of the everyday people who are left out of the very polarizing conversation surrounding the Supreme Court. Instead, most of the ongoing debate has been centered around the power of developers and the government.

The spirit and intent of the Fair Housing Act boils down to a simple concept: Ensuring that all people have the opportunity to live in quality housing. The original focus of the Fair Housing Act was not about making sure proposed budgets pencil out, nor the competitive point-scoring systems for housing applications. People of the human race, regardless of their color, national origin, sex, familial status or disability, are in desperate need of housing that they can afford.

If you have a Housing Choice Voucher in Houston, your quality housing options are extremely limited. As of 2010, there were more than 19,000 families on Houston's voucher waiting list. If you are one of the nearly 23,000 people with a voucher in the Houston area, your search for housing is a challenge. After gaining access to a computer and beginning your search, the shortage of quality housing choices becomes evident rather quickly. In Texas, property owners have the right to turn renters away simply based on their source of income. A property owner can disqualify an applicant if they are paying any portion of their rent with a voucher. Thus, most voucher holders begin their search at a deficit.

According to Houston Housing Authority's recommended search engine, there are are only 174 available units within the city of Houston that accept vouchers and are not elderly properties. The number of available units in communities that are not within concentrations of poverty, minority and crime are even more miniscule. It's difficult to dispute that this presents a serious problem for affordable housing seekers in Houston and other cities like it.

Because of the Supreme Court's decision to uphold disparate impact, a tool does exist to promote equitable housing in all communities, and not simply concentrate more poverty in existing depressed communities. What does this mean to common folks who are not fully immersed in the world of fair housing and affordable housing? Ideally, it means that everyone will have a better shot at choosing where they want to live and not be limited to housing choices in communities that do not ultimately fit their needs.

In a society still fraught with racism and an inferred undertone that poor, disabled and minority families do not deserve equitable services, the Supreme Court's ruling could not come at a better time. But now that the decision has been issued, what's next? Will the provision of housing choice be enforced? How will NIMBYism and the refusal of building in high opportunity census tracts be dealt with? And in the meantime, while it's all being figured out by the experts, what answers can be given to those families who simply want to find homes for their families in areas that can provide a decent education for their kids and safe place to lay their heads at night?

These are the same families who have been searching for homes in a subpar selection pool, to no avail. Instead of participating in the ongoing intellectual debate, it's time to put differences aside and seek out viable solutions for a population that has been historically disenfranchised. How will you contribute to making our society equitable and whole?

http://texashousers.net/2015/07/02/the-real-impact-of-the-supreme-courts-fair-housing-decision/

disabilityscoop

IRS Proposes Rules for New ABLE Accounts

By MICHELLE DIAMENT
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Six months after a federal law paved the way for tax-free savings accounts for people with disabilities, officials are providing details on how they expect the new program to operate.

In a proposed rule issued Monday, the Internal Revenue Service unveiled guidelines for the Achieving a Better Life Experience, or ABLE, Act. The federal law is designed to allow people with disabilities to save money without risking their government benefits.

The proposal offers specifics for the first time on how the new accounts should function and clarifies what types of expenses money saved in an ABLE account could be used for.

Advocates say they're pleased that the IRS took a lenient view in determining what counts as "qualified disability expenses" under the law. Though the ABLE Act mandates that money can be used for specific purposes including transportation, housing and education, the law also allows for "other expenses" and it is up to regulators to determine what should qualify.

"The Treasury Department and the IRS conclude that the term 'qualified disability expenses' should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefits to others in addition to the benefit to the eligible individual," the proposal states.

The view that expenses must merely offer a quality of life benefit for a person with a disability — rather than be of medical merit — is significant, said Heather Sachs, vice president of advocacy and public policy at the National Down Syndrome Society.

"We're glad to see that a person with a disability would not have to justify the purchase of an iPhone or something similar as a medical expense," Sachs said.

Other details within the proposal are causing concern, however. The reporting and oversight requirements outlined go beyond those governing 529 college savings plans that the ABLE accounts were modeled on and could make the disability savings vehicles onerous to administer or utilize, advocates and state officials say.

"As I read the proposed regulations, every time individuals with disabilities want to spend even a single dollar of their money, from their own ABLE accounts, they have to file paperwork with the state demonstrating that each is a 'qualified disability expense,'" said Nebraska State Treasurer Don Stenberg. "This is a slap in the face of Americans with disabilities, is an unreasonable and unnecessary burden on them, and will create administrative burdens that will increase the costs qualified individuals will need to pay to use the program."

The proposed rules will be up for public comment for 90 days before the IRS issues final regulations.

In the meantime, several states are working to make the ABLE Act a reality for their residents. Despite the federal law, each state must put their own regulations in place before making the accounts available.

Currently, the ABLE Act has been enacted in 22 states, according to the National Down Syndrome Society. Each of these states, however, is still working out details related to administering the program.

Sachs said she expects that states will likely wait for the final IRS rules to be issued before allowing financial institutions to begin offering ABLE accounts.

http://www.disabilityscoop.com/2015/06/23/irs-proposes-rules-able/20401/